IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2492 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REVABEN D/O BHIKHABHAI ZAVERBHAI - Petitioner(s)
Versus
CHANDRAKANT SHIVABHAI & 1 - Respondent(s)

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Appearance :

MR BB NAYAK with MR TANVISH U BHATT for Petitioner(s) : 1,
MR AJ PATEL for Respondent(s) : 1, 1.2.1,1.2.2
MR AY KOGJE, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/12/2006

ORAL JUDGMENT

1. Shri B.B. Nayak, learned counsel for Mr. T.U. Bhatt, learned counsel for the petitioner, Shri A.J.Patel, learned counsel for the respondents

no.1, 1.2.1 and 1.2.2, Shri A.Y. Kogje, learned AGP for the respondent no.2.

2. By this writ application, the petitioner Revaben, daughter of Bhikhabhai Zaverbhai, seeks to challenge the order passed in revision application no. 841/88 and the review application 4 of 1994, which came to be rejected by the Gujarat Revenue Tribunal.

3. The short facts necessary for disposal of the present petition are that the respondent no.1 Somabhai Shivabhai [since deceased] on 17.1.75 made an application to the Mamlatdar under Section 70B of the Bombay Tenancy & Agricultural Lands Act, seeking a declaration that he is a tenant in the property/agricultural land. On 21.3.76, the present petitioner Revaben filed Regular Civil Suit No. 74/76 in the court of the learned Civil Judge [Senior Division] Borsad, seeking a relief that the respondent be restrained from cultivating the land in dispute.

4. On 30.11.77, in view of the mandatory provision of Section 85 of the Bombay Tenancy & Agricultural Lands Act, the learned Civil Judge

referred the matter to the Mamlatdar to decide the rights of the parties. On 13.8.87, the Mamlatdar held that in patriarchal family, relations should be seen from the side of the father or the family should consist of the members who are related blood from the side of the father. He held that the respondent no.1 could not be treated to be a member of the petitioner's family. He also referred to various documents like water bills etc. and held that the respondent no.1 for purposes of the Act would be deemed to be a tenant.

5. Being aggrieved by the said order, the petitioner filed Tenancy Appeal No. 331/97 in the court of the Deputy Collector, interim stay was granted in the petitioner's favour, but after hearing the parties, the Deputy Collector held that the petitioner had failed to prove the blood relations with the respondent no.1. He also held that the respondent no.1 was not a member of the family. Still not satisfied, the petitioner filed revision application no. TEN.B.A.841/88 before the Gujarat Revenue

Tribunal, the Tribunal ultimately rejected the application. The petitioner thereafter filed review application before the Tribunal which also came to be dismissed. The petitioner being aggrieved by the orders passed by the revenue authorities and the Tribunal now is before this Court.

6. Shri B.B. Nayak learned counsel for the petitioner submitted that the petitioner would be taken to be a family member being son of sister of the plaintiff's mother, according to him, if because of the old age and widowhood of Smt. Diwaliben, mother of the present petitioner, the respondent no. 1 was manging the affairs and was looking after the cultivation, he would not become a tenant, but would not be entitled to claim any rights being a member of the family. His further submission is that the findings recorded by the authorities and the Tribunal are perverse as the authorities and the Tribunal have not taken into consideration the important material which had material bearing on the facts of the case. He also submitted that

the name of the respondent is not shown in the revenue records and as the revenue receipts issued by the authorities showing payment of land revenue are in the name of the petitioner, the same would be a circumstance to be taken into consideration against the interest of the respondent no.1. It was lastly submitted that the mother of the petitioner had executed a Will wherein it was stated that Diwaliben was cultivating the land, then respondent no.1 being a witness to the Will would not be allowed to say anything contrary to what is contained in the Will. He submits that the petition be allowed.

7. Learned counsel for the other side has opposed the writ application submitting inter alia that the concurrent findings recorded by the three authorities cannot be set aside simply on the ground that yet another view is possible.

8. In the matter of Saiyed Nasiruddin Saiyedali v. Kburabegum wd/o. Saiyad Ajimuddin Kamaluddin [2000 [2] GLH 132], on which reliance has been placed by Mr. Nayak, facts were little

different. In the said case, a brother was looking after the agricultural land of the married sister, he made an application to the authorities and the authorities held that as he had blood relations with the owner of the property, he could not be deemed to be a tenant. The High Court observed that the meaning of the word “family” would depend upon the field of law for which the word is used. The High Court also observed that according to the dictionary meaning of the family, it would be a group of people connected by close relationship. For legal purposes, a family is usually limited to relationship by blood. In the said case, the High Court had observed that the brother would not be allowed to take undue advantage of grabbing the land of the sister who had become a widow and who had permitted her brother to cultivate her land. Present is not a case of that type. In the present case, the petitioner or the petitioner's mother had no blood relationship with the respondent, they come from different families. Though mother of the

petitioner and the mother of the respondent no.1 were real sisters, but having married to different persons they would become member of different families. Consequently, their children would not constitute a family for the purposes of the Act. Under the circumstances, the respondent no.1 cannot be taken to be a family member of the deceased Diwaliben.

9. After taking me through the findings recorded by the subordinate courts, the revenue authorities and the Tribunal, and the evidence which has been produced on the records, Shri Nayak submitted that the findings are perverse. In the opinion of this Court, present is not a case where there is no evidence to support the findings, the evidence is still there. It would always be open to the Court which has jurisdiction to decide to consider the reliability of the witnesses and decide whether such evidence is to be accepted or not. Possibility of another view would be no ground to hold that the findings are perverse.

10. So far as the non-recording of the name of the

respondent no.1 in the revenue record is concerned, the same would not make a difference, because, other evidence, which is brought on the record clearly shows that the respondent no.1 was in cultivating possession of the property. Issuance of the revenue receipts in the name of the petitioner would also not help the case and cause of the petitioner, because receipts are not produced from possession of the petitioner, but are coming from the possession of the respondent no.1. It was stated before the authorities that receipts were in the name of the mother of the petitioner and it would be obviously so because Diwaliben was a recorded owner.

11. The question of respondent no.1 being witness to the Will would not make any change in the matter, because, a witness is a witness to the event, he may be a witness to identify a person executing a document or he may be an attesting witness acknowledging that particular person has signed in his presence as executant and he had signed in the presence of executant. It is

nobody's case that the contents of the Will were read over to the witness and he accepted the correctness of the contents.

12. Taking the case from every angle, I am unable to hold that the findings recorded by the authorities call for any interference. The subordinate authorities had jurisdiction to appreciate the evidence and simply on the ground that another view is possible, it would not be possible for this Court to interfere in the matter.

13. The petition is dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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